

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division**

JOHN DOE 4, by and through his next friend,
NELSON LOPEZ, on behalf of himself and all
persons similarly situated,

Plaintiffs,

v.

SHENANDOAH VALLEY JUVENILE
CENTER COMMISSION,

Defendant.

Civil No. 5:17-cv-00097-EKD/JCH
Judge Elizabeth K. Dillon

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY AND FOR
MODIFICATION OF THE AMENDED SCHEDULING ORDER**

Plaintiffs John Doe 4, *et al.*, by their attorneys, hereby move this Court, pursuant to Rule 37(a)(1), Fed. R. Civ. P., for the entry of an Order compelling Defendant Shenandoah Valley Juvenile Center Commission (“SVJCC”) to: (i) make SVJCC-designated expert witness Joseph Gorin, Psy. D., available for deposition by Plaintiffs; and (ii) make SVJCC-designated expert witness Timothy Kane, M.D., available to Plaintiffs for additional deposition testimony beyond the three hours of deposition time SVJCC offered Plaintiffs, essentially on a “take it or leave it” basis, in contravention of Plaintiffs’ right to depose Dr. Kane for a full seven (7) hours to the extent Plaintiffs’ counsel deems necessary and/or appropriate in the circumstances of this case.

Plaintiffs also request that the Court allow for a minor modification of the Amended Scheduling Order entered August 22, 2018 (ECF Docket No. 81), so as to allow Plaintiffs seven (7) calendar days following the completion of their depositions of SVJCC’s designated expert witnesses within which to move to exclude any or all of Defendant’s expert witnesses from

testifying at the upcoming trial in this action, should they choose to do so. This modest modification is consistent with fundamental fairness and will not unduly prejudice the Defendant's opportunity to prepare for trial or unduly disrupt the orderly but highly demanding procedural schedule in connection with which both sides have heretofore adhered in a flexible and cooperative manner.

Plaintiffs' counsel and Defendant's counsel have conferred regarding these matters but have been unable to resolve their differences, thus necessitating this request for the Court's assistance.

For these reasons, as more fully elaborated in Plaintiffs' Memorandum of Law filed in support hereof, this Motion should be granted.

DATED: October 29, 2018

Respectfully submitted,

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ORDER

This matter comes before the Court for decision on the Motion to Compel Discovery and for Modification of the Amended Scheduling Order filed by Plaintiffs John Doe 4, *et al.*, on October 29, 2018.

The Court having considered Plaintiff's Motion and supporting Memorandum of Law; the Defendant Shenandoah Valley Juvenile Center Commission's Opposition thereto; the Plaintiffs' Reply; and the arguments of counsel in a telephonic hearing convened on the Motion on _____, 2018; and the Court having concluded on the basis of all of the foregoing that good cause has been shown for the granting of the relief requested:

It is hereby ordered that Plaintiffs' Motion should be and the same is **GRANTED**. In accordance with this determination:

- (i) Defendant shall make its designated expert witness Joseph Gorin, Psy. D., available to be deposed by Plaintiffs' counsel on a date and at a time mutually convenient to all counsel;
- (ii) if the three (3) hours provided by Defendant within which its designated expert witness Timothy Kane, M.D., is to be deposed by Plaintiffs' counsel on

November 2, 2018, proves inadequate to meet Plaintiffs' needs, Defendant shall make Dr. Kane available for up to an additional four (4) hours for deposition by Plaintiffs on a date and at a time mutually convenient to all counsel in accordance with the provisions of Rule 30(d)(1), Fed. R. Civ. P.; and

- (iii) the Amended Scheduling Order (ECF Dkt. No. 81), is hereby modified, in order to allow the Plaintiffs' counsel, in their discretion, to move to exclude any or all of Defendant's designated expert or fact/expert witnesses from testifying at trial so long as such Motion and supporting papers are filed within seven (7) days of the date upon which the Plaintiffs' depositions of the Defendant's witnesses are completed.

SO ORDERED this ___ day of November 2018.

Hon. Joel C. Hoppe
U.S. Magistrate Judge

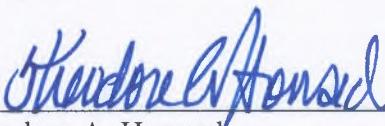
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, true and correct copies of Plaintiffs' Motion to Compel Discovery and for Modification of the Amended Scheduling Order and proposed Order were served *via* electronic mail upon the following:

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